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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 885

JOHN E. PARKS, JR., AND ROBERT M. FOOTE AND ALBERT McHUGH AND PAUL ZIEGLER AND SILVIO STAMERRO, INDIVIDUALLY AND AS REPRESENTATIVES OF THE MEMBERS OF LOCAL 28, IBEW, IN A CLASS ACTION AND LOCAL UNION 28, IBEW,

Petitioners,

V.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND LOCAL UNION NO. 24 (IBEW),

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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This case raises questions of construction of federal labor statutes which are of the highest importance and urgently require settlement by this Court. As in the past generation, the protection of labor unions and employers in their relationship to each other were the chief problems of labor law, so currently the chief problem in this field is the protection of the individual union member in his relationship	

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to his union. Concern over this problem has culminated in the Landrum-Griffin Act of 1959. The instant case is the first opportunity of this Court to clarify the following fundamental questions as to both substantive rights and the scope of federal jurisdiction under this act and related labor statutes, which immediately and vitally affect not only the 1400 members of Local 28, IBEW, and the 150,000 IBEW members in the electrical construction industry, but also the millions of rank and file members of all American labor unions 21

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JOHN E. PARKS, JR., AND ROBERT M. FOOTE AND ALBERT McHUGH AND PAUL ZIEGLER AND SILVIO STAMERRO, INDIVIDUALLY AND AS REPRESENTATIVES OF THE MEMBERS OF LOCAL 28, IBEW, IN A CLASS ACTION AND LOCAL UNION 28, IBEW,

Petitioners,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND LOCAL UNION NO. 24 (IBEW),

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

John E. Parks, Jr., et al., individually and as representatives of the members of Local 28, International Brotherhood of Electrical Workers (IBEW) and Local Union 28, IBEW, petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in this case on January 23, 1963.

OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals, not yet officially reported, are printed at pp. 1-78

and 78-82 respectively of the appendix to this petition.* The opinion and supplemental opinion of the District Court are reported in 203 F. Supp. 288 (1962) and are printed at Jt. App. 1-47.

JURISDICTION

The final order of the Court of Appeals was entered on January 23, 1963. No rehearing was requested. The mandate has been stayed pending the disposition of the case by this Court. The jurisdiction of this Court arises under Title 28 U.S.C. §1254.

QUESTIONS PRESENTED

By Petitioners

1. Whether the majority of the Court of Appeals erred in concluding, contrary to the District Court, on the evidentiary facts found by both courts, that the International President (IP) of the IBEW did not violate his fiduciary duty under §501(a) of the Landrum-Griffin Act in revoking the charter of Local Union 28 for engaging in a strike without his consent, although, among other things, (a) the local was forced to strike because the IP, while professing his support to the local in the local's collective bargaining, made a secret deal with the employers, behind the local's back, which the International conceded "wasn't doing a very good job for labor" if made (Jt. App. 381), and which destroyed any chance of the local to bargain a fair agreement; and (b) one of the reasons for revoking the charter was a desire to punish the members of the local because the local's leaders had successfully sued the International under Landrum-Griffin?

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* Numerical references preceded by "App." are to the appendix to this petition. References to "Jt. App." are to the Joint Appendix in the Court of Appeals, of which nine additional copies have been filed with this petition.

2. Whether the majority of the Court of Appeals erred in holding legal and proper the IP's objective in bringing revocation proceedings against Local 28, namely to force the local to vote to direct its collective bargaining team to submit to dictation of the terms of a new collective bargaining agreement by the Council on Industrial Relations (CIR) of the Electrical Contracting Industry (consisting of an equal number of representatives, including the IP, of the IBEW and of the National Electrical Contractors Association (NECA)), which, with the approval of the IP had passed a secret resolution, pursuant to which the local's new contract would contain a no-strike provision, and could never be terminated or changed in any respect without the consent of the Maryland Chapter of NECA or the unanimous consent of the CIR?

3. Whether the majority of the Court of Appeals erred in reversing the District Court's conclusion that the revocation of the local's charter was invalid for failure to accord a full and fair hearing as required by §§101(a)(5) and 609 of the Landrum-Griffin Act, where the IP brought and heard the charges; refused to testify although the defense was based on the impropriety of his own conduct in the matter out of which the charges arose; and advised, out of the presence of the local's representatives, with the general counsel of the IBEW, who conducted the proceedings on behalf of the IBEW?

4. Whether the courts below erred in holding that the revocation of Local 28's charter, and the immediate chartering, pursuant to a plan, of a new and subservient local for the same jurisdiction, in which the prior democratically elected leadership was ousted by strict limitation of the persons eligible to nominate, in favor of leadership handpicked and completely dominated by International, did not constitute a trusteeship (defined by §3(h) of Landrum-Griffin as "any receivership, trusteeship or other method)

of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution and by-laws"), as to which §304 of that act grants federal jurisdiction over actions by members of the local challenging the reasons for such supervision?

5. Whether the courts below erred in holding, notwithstanding the nonavailability before the NLRB of the broad relief sought in this case and the relevance of certain factual issues to ultimate questions in the instant case broader than unfair labor practices as such, that the District Court was correct in refusing to make any findings whatsoever on such issues, because such findings may have been to the effect that there had been certain conduct (a) on the part of a party, and (b) on the part of persons not parties to the instant litigation, which was prohibited by the unfair labor practice provisions of the NLRA as amended?

6. Whether, because of the IP's violation of his fiduciary obligation and his bad faith and illegal purposes in connection with the strike for which the local's charter was revoked, the leaders of the local should be immune from disciplinary action by International for their part in the strike?

7. Whether the local is entitled to damages and all plaintiffs to counsel fees?

Additional Questions in the Case

8. Whether the courts below correctly held that the federal courts have jurisdiction over a suit by a local union against its International for violation of the International Constitution in revoking the local's charter, on the ground that the constitution is a "contract . . . between . . . labor organizations" within §301(a) of the Taft-Hartley Act?

9. Whether the courts below correctly held that members of the local whose charter was revoked by Interna-

tional are themselves "disciplined" by such revocation within the meaning of §§101(a)(5) and 609 of Landrum-Griffin, giving the right to bring action in the federal courts to members disciplined without a full and fair hearing or for exercise of rights granted by Landrum-Griffin?

10. Whether the courts below correctly held that the Norris-LaGuardia Act did not preclude injunctive relief under §301(a) of Taft-Hartley, compelling the restoration of Local 28's charter?

11. Whether the courts below correctly held that the power of the federal courts to give relief against union discipline which violates the union constitution as well as the fiduciary obligations of the IP are not pre-empted by the NLRB's jurisdiction merely because certain aspects of the conduct of the IP may arguably be unfair labor practices.

STATUTES INVOLVED

The following statutes involved are printed as follows:

Landrum-Griffin Act (LMRDA)
§2, 29 U.S.C. §401, App. 83.
§3(h), 29 U.S.C. §402(h), App. 71 n. 74.
§101(a)(4), 29 U.S.C. §411(a)(4), App. 84.
§101(a)(5), 29 U.S.C. §411(a)(5), App. 67 n. 63.
§101(b), 29 U.S.C. §411(b), App. 84.
§302, 29 U.S.C. §462, App. 84.
§304(a), 29 U.S.C. §464(a), App. 72.
§304(c), 29 U.S.C. §464(c), App. 71-2, n. 75.
§501(a), 29 U.S.C. §501(a), App. 85.
§609, 29 U.S.C. §529, App. 67, n. 64.

NLRA §8(d), 29 U.S.C. 158(d), App. 85.

LMRA ("Taft-Hartley") §301(a), 29 U.S.C. §185(a), App. 54.

Norris-LaGuardia Act, 20 U.S.C. §101 et seq. App. 60-61, n. 55.

STATEMENT OF THE CASE

THE PROCEEDINGS BELOW

The Nature of the Cases

These are consolidated cases brought by Local 28, IBEW, and its members as a class: (1) to set aside the revocation of the local's charter by the International President (IP) of the IBEW for striking without his consent, (2) for an injunction against formation of a new local to take over Local 28's jurisdiction and (3) for damages for the local (but not the individual members) and counsel fees.

The gravamen of both complaints was that the revocation of the charter was illegal because: (1) the IP's consent to the strike was not required by the IBEW constitution and (2) even if it was so required, the revocation was invalid because (a) it was in breach of the fiduciary duty of the IP under §501(a) of Landrum-Griffin as well as the common law and IBEW constitution; (b) it was in bad faith in that the IP imposed punishment because he was angry at the Local's leaders for having successfully vindicated their rights against International in three federal suits within the previous 18 months; (c) the purpose of the revocation was illegal and contrary to public policy, namely, to force upon the Local a perpetual no-strike collective agreement not subject to termination or change in any respect without the consent of the employers or the unanimous approval of the Council on Industrial Relations of the Electrical Contracting Industry (CIR), a bipartite body consisting of an equal number of representatives of the IBEW and the National Electrical Contractors Assn. (NECA), of which the IP of the IBEW and the Chief Executive Officer of NECA were the co-chairmen; (d) the charter was revoked by a tribunal lacking jurisdiction; (e) the Local was denied a full and fair hearing; and (f) the revocation was an unreasonably severe sanction under the circumstances.

The Bases of District Court Jurisdiction

Jurisdiction in the Local 28 case was based on §301(a) of the LMRA, 29 U.S.C. §185(a) on the ground that the IP's action breached the IBEW Constitution, which is a "contract . . . between . . . labor organizations" within §301(a). The members' suit was brought under §§101, 102, 302, 304 and 609 of Landrum-Griffin 29 U.S.C. §§411, 412, 462, 464, 529 on the grounds that, (a) the revocation constituted "discipline" of the members which violated Landrum-Griffin and (b) the revocation and subsequent chartering of a subservient Local to take over the jurisdiction of Local 28 under handpicked leaders dominated by the International was a "trusteeship" within §3(h) of Landrum-Griffin subject to federal jurisdiction under §§302 and 304. The defendant contested plaintiffs' theories of jurisdiction, and raised affirmative jurisdictional defenses: (a) the Norris La-Guardia Act precludes an injunction in the local's case and (b) the doctrine of NLRB primary jurisdiction bars relief because part of the IP's conduct which allegedly violated the law and the IBEW constitution was also arguably an unfair labor practice.

The District Court Decision

The District Court held for plaintiffs on all jurisdictional questions except trusteeship, but refused to make any findings on certain questions of fact on the ground that they involved matters within the primary jurisdiction of the NLRB (App. 65, n. 58). On the merits, the court found the question of whether the IBEW constitution required the consent of the IP to the strike a "bona fide" "jury question" (Jt. App. 354, 372), which he resolved against the plaintiffs. However, the court held the revocation vitiated by the IP's bad faith and breach of fiduciary duty, by the unreasonable severity of the sanction under all the circumstances and by the failure to accord a full and fair hearing. As to bad faith, the court found that the IP acted

from "mixed motives", but there was enough bad faith to vitiate the revocation. The court ordered restoration of the charter of Local 28 and revocation of the charter which had been granted to the new Baltimore local (Local 24) in the face of plaintiffs' prior claim for injunction against such grant. The decree appointed a master to protect the rights of all IBEW members in the Baltimore area. Damages to the local and counsel fees were denied, and International was permitted to press charges previously filed against leaders of the local for causing the unauthorized strike.

The Court of Appeals Decision

Both parties appealed to the Fourth Circuit. The Court of Appeals unanimously sustained the District Court on all jurisdictional questions. By a 2-1 vote (Judge Soper dissenting) it reversed on the merits, holding that: (1) the IP's conduct, on the evidentiary facts as found by the District Court, did not violate his fiduciary duty, (2) although the local was the "bargaining representative for its members" (App. 6), it was entirely legal and proper for the IP to bring disciplinary proceedings to force the local to accept a contract which would perpetually take the effective bargaining power from the local and subject the local members to "high level bargaining" (App. 45) in the CIR, (3) the revocation was not an unreasonable sanction, (4) the local had the "full and fair hearing" required by §101(a)(5) of Landrum-Griffin, and (5) the IP's purpose to punish the Local for the federal suits filed in its prior disputes with International was not a sufficient reason under the circumstances to invalidate the revocation for bad faith. The majority, "not unmindful that the interests of the members of Local 28 in various local and international pension and benefit funds [the Local funds amounting to approximately ¾ million dollars] have been made uncertain by the revocation" (App. 77) remanded the cases for further orders.

Facts

Background — Previous Difficulties Between Local and International

In 1958, Local 28's new president, Eveson, asked International's support in his "effort to bring the financial affairs of the Local into line with the IBEW constitution" (Jt. App. 18). In February 1959, Freeman, the IP, responded by imposing a trusteeship under an International Representative, Goidel. Goidel sided with the faction whose prior control of the Local had been responsible for the concededly improper financial practices Eveson had sought to change (Jt. App. 693), and summarily removed Eveson from office for refusing to sign checks for "expenses" without evidence that the expenses were actually incurred. The trustee ruled "with an iron hand" (Jt. App. 18). Among other things, he suspended all by-laws and all membership meetings, and, through a sweetheart contract, he substantially "increased the ratio of apprentices to journeymen" (Jt. App. 18), which made supervision of apprentices less effective, and decreased journeymen's employment opportunities, as well as the total compensation for electrical construction work.

In November, 1959, the trustee, purportedly conforming to the Landrum-Griffin requirement of secret ballot for dues increases, submitted a concededly "drastic" (Jt. App. 862) proposal to the members by mail referendum ballot giving a choice of voting for either a substantial increase in dues, or for a lesser increase and a reduction of welfare benefits. There was no place on the ballot for a "no" vote (Jt. App. 730). Seven local members, the present leadership, after fruitlessly requesting relief from the trustee and the IP, sued to enjoin the referendum without further pursuing their internal union remedies.

The District Judge who held a hearing on that suit, as well as the District Judge in the instant case, agreed that

it would be unreasonable to have required any further delay for internal union remedies since either alternative under the referendum would have had immediate drastic effects and there was no opportunity to vote "No" (Jt. App. 281, 634). After the proceedings were brought (Jt. App. 264), the IP declared the referendum ineffective because most of the members had abstained from voting.

In March, 1960, the trustee, in response to a request for return of local autonomy and a new election of officers, filed charges before the International Executive Council (IEC) against the members who had brought the injunction suit (Jt. App. 18-19). The IP who admitted to a "very deep rooted feeling" against suits before exhausting union remedies (Jt. App. 260-1), and expressed himself publicly as "hating" the Landrum-Griffin Act because of its protection of access of union members to the courts (Jt. App. 26), personally authorized the charges and directed International's general counsel to assist in their preparation (Jt. App. 263-5). The charged members sued once more to enjoin the prosecution of the charges. The District Court in a preliminary hearing made clear that a conviction would not be sustained (Jt. App. 635), but withheld an injunction to permit the case to be heard by the IEC, which rejected the members' request to find them innocent, but closed the case out without imposing sanctions.

Also, in March, 1960, the Executive Board of Local 28 sued to set aside the trusteeship. In its sworn answers to interrogatories in that suit, International alleged as a reason for continuing the trusteeship the fact that members of the local had filed suits without pursuing their internal union procedures (Jt. App. 629-30). After a motion by International to dismiss this suit was overruled and the case was approaching trial, the IP in June, 1960, terminated the trusteeship. The present leadership of Local 28 was elected in August, 1960. International's first opportunity for reprisals came in 1961.

Issues Between Local and Maryland Chapter, NECA, to May 15, 1961

April 1, 1961, was the anniversary date of the local's collective agreement with the Maryland Chapter of NECA. The local gave notice it was terminating the contract; and the collective bargaining team designated by the members, opening negotiations for a new contract, requested a wage increase of 35¢ per hour.

The local's contract contained a "council clause" submitting disputes and proposed changes in the agreement, where the parties could not agree, to the CIR for binding decision.

The Maryland Chapter claimed that Local 28 was bound to submit the terms of any new contract between the parties to the CIR, on the ground it disputed the Local's right to terminate, and this "dispute" was covered by the "council clause" of the existing agreement.

The local thereupon, on March 28, 1961, filed proceedings in the U.S. District Court for Maryland for a declaratory judgment that it was entitled to terminate its contract with the Maryland Chapter, and was not bound to submit the terms of any new contract to the CIR. The local sent a copy of the suit papers to International, which did not respond in any way. However, the IBEW general counsel, with the approval of the IP, conferred about the case with counsel for NECA and the Maryland Chapter, without notifying the local, early in April. On April 21, 1961 (App. 686), while the suit was pending, the Maryland Chapter gave notice to the local that the Chapter was submitting to the CIR all disputes over the terms of the new contract and invited the local to appear. On April 25th, half the local's members walked off their jobs in anger at the Chapter's notice of submission to the CIR while the litigation was pending. On May 5, 1961, the Maryland Chapter

offered a wage increase of 5¢ an hour for 1961, 5¢ for 1962 and 10¢ for 1963.

On May 11, 1961, the District Court (Chief Judge Roszel C. Thomsen) construed the contract between the Local and the Maryland Chapter as terminable and held it was terminated by the local, effective March 31, 1961. The Court also stated by way of dictum that an agreement with a perpetual council clause which would not permit the local to terminate over objection of the Maryland Chapter without the consent of the CIR (which, under its rules, cannot change the status quo between the parties except by unanimous vote) would be illegal. (See *Local 28 v. Md. Chapter NECA*, 194 F. Supp. 494, D. Md. 1961). The court did not enjoin the Maryland Chapter's submission to the CIR, but made it clear that the CIR could not issue a binding decision if the local did not agree, and suggested that every local member go back to work during good faith collective bargaining (Jt. App. 21-2). The Chapter indicated it would appeal, and all the local members reported for work.

At the next bargaining session on May 13, 1961, the Maryland Chapter's negotiators congratulated the local's negotiating team and discussed a wage increase of 50¢ over three years, "an amount substantially higher than the last offer" (App. 20). The local, as the District Court specifically found, reasonably believed that it had the support of the International in its efforts to obtain a substantial increase (although an International Representative had told the local that 35¢ was "shooting for the moon") (Jt. App. 20), and reported to the IP on May 14 that management was coming up with "far more substantial offers" (App. 20).

The CIR "Decision" of May 15, 1961

On May 15, 1961, the submission of the Maryland Chapter to the CIR came on for hearing. The members of the local

were at work. The local did not appear, and sent a letter explaining its reasons. The District Court found that the International President, who presided at the hearing, was "very angry" (Jt. App. 23). Following the presentation of the Maryland Chapter, as the District Court found despite elaborate attempts (including Freeman's own false testimony (Jt. App. 217-19)) to deny, conceal and falsify the facts (Jt. App. 23), the CIR, with the assent of the IP, reached a "tentative decision" (no decision is formally announced until after the completion of a session which lasts several days) on an increase of 10¢ per hour for the next year, which, as the District Court found, "tipped the hand" of the IP to the management representatives on the CIR as to the limit of the wage he would support for the local (Jt. App. 380; for text of the "decision" see Jt. App. 705).

This decision was actually a "sellout" of the local. As International's leading counsel conceded, "if he had bargained this out at 10¢ all I say about it was that he wasn't doing a very good job for labor" (Jt. App. 381).* The District Court found that "the Local was afraid to submit its dispute to the Council . . . and the evidence in the instant cases shows that this fear was justified by the attitude of Freeman and other members of the Council of May 15 and throughout these cases" (Jt. App. 40, n. 44), and that because of this attitude, "it would not be reasonable" to require the Local to submit to CIR decision (Jt. App. 40).

The Local was not informed of this decision of the Council and did not discover it until about three weeks after the

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* Despite International's effort to show that Baltimore was less unionized than other nearby cities, the Maryland Chapter represented "80% of the major construction in and around Baltimore" (App. 6, n. 3), which Professor Dunlop, International's expert, testified is the "key sector" in which the "degree of organization" is material to the "kinds of wages we are talking about", i.e., "in the commercial industrial sector rather than in home building or heavy and highway construction" (Jt. App. 509).

trial began — International did not reveal it in its pre-trial answers to the Local's interrogatories.

The Strike

On May 18, 1961, three days after the CIR "decision", the Maryland Chapter offered the local a 10¢ increase for 1961, 10¢ for 1962, and 5¢ for 1963. On May 19, 1961, the Chapter noted an appeal from the decision in the declaratory judgment proceedings. On May 20, the Md. Chapter's submission to the CIR was referred to the CIR Executive Committee, consisting of Freeman, Geary and two other members to "review, revise or take such other action as may be deemed necessary with the language and the effective date of the Council's decision reached in the Baltimore case, prior to its being released" (Jt. App. 23). On May 24th, NECA's counsel, on Geary's instruction, wrote to counsel for the Md. Chapter that there had been a CIR decision and asked assistance as to the wording thereof, although the District Court found that the counsel for the Md. Chapter was not informed of the amount of the wage that had been decided upon (DX 51, Jt. App. 818-19, 423, 452).

Between May 15 and June 2, the Local was bargaining with the Md. Chapter, which, so far as the Local knew, was its only adversary. During that time, however, without the Local's knowledge, as both courts found, "Freeman assured Geary that if the appeal [of the Md. Chapter in the declaratory judgment case] was dismissed, Freeman would do everything he could to see that the Local submit to the Council all issues regarding the terms and provisions of a new contract which could not be resolved by bargaining between the Local and the Maryland Chapter" (Jt. App. 24). On June 2, 1961, at a meeting in the office of International's general counsel, at which representatives of

NECA and the Md. Chapter participated, and of which the Local was likewise not informed, it was decided to dismiss the appeal "because the attorneys were agreed that there was a small chance of success and feared that a decision on appeal might be rested on broader grounds, evidently that any 'evergreen clause' . . . would be illegal" (Jt. App. 24).

On the same day, with knowledge of this determination to end the litigation (Jt. App. 441) the Executive Committee issued a "decision" that "in view of the pending litigation, no decision would be issued in the Local 28 case" (Jt. App. 653-4).

Geary promptly sent a representative to the Md. Chapter to advise it with respect to its negotiations with the Local and "particularly" to ask that the new contract contain the so called "yellow sheet clause", (Jt. App. 610-11) making it crystal clear that neither party could ever terminate or change the agreement without the consent of the other party or the unanimous approval of the CIR. At the next bargaining session, on June 5, 1961, the Chapter's offer for a new one-year contract was a wage increase of 10¢ an hour and the "yellow sheet" council clause (App. 21).

The appeal in the declaratory judgment case was formally dismissed June 9. On June 13, the local, making no progress in negotiations and angered by the demand for the perpetual council clause after having won the declaratory judgment case, voted to strike and notified the IP, from whom it had had absolutely no previous disapproval of its conduct during negotiations, stating, "any instructions from you will be appreciated". The IP, who authorized the 1962 New York strike for a 20-hour week, flatly refused consent, testifying to a variety of reasons which the District Court found were later and insubstantial rationalizations (Jt. App. 25, n. 24-27).

The strike began on June 19, and the Local's representatives obtained an audience with the IP on June 20, at which the local advised the IP that it had succeeded in signing up a dozen contractors, at least one of which was a NECA member, at the 35¢ figure; that the local's leaders felt they would win the strike momentarily; that the Md. Chapter had demanded the "yellow sheet" council clause; and that the local was bringing charges against the Md. Chapter before the NLRB for refusing to bargain in good faith by insisting on this clause. They asked essentially, as they put it in a telegram a day or two later, "to give us time, your cooperation, and let things run their course in Baltimore" (Jt. App. 27, n. 29).

International had generally done just this in the past. During Freeman's tenure, since 1955, there have been approximately 15 to 20 strikes in the so called "strikeless" electrical construction industry (Jt. App. 232), in which no prior permission was asked, and no disciplinary action was taken. Up to the present case, the unvarying practice of the International was to refer the matter to a Vice-President for investigation and recommendation (Jt. App. 563), which was invariably followed (Jt. App. 564). A favorable recommendation was always given if the strike did not violate federal or state law, or existing agreements (Jt. App. 563). The same procedure has been consistently followed even where the local has gone off the job before notifying the International or asking for consent (Jt. App. 564-565). In fact, at the very time of Local 28's strike, Local 159, in Madison, Wisconsin, had struck without the IP's consent, on June 1, 1961, because of an impasse created by the NECA Chapter's insistence on a "yellow sheet" council clause in the new contract. Freeman was informed of the issues by the contractors and, following the established procedure, referred the matter to the appropriate Vice

President. The Local was out on strike four full weeks, until June 27, 1961, when NECA gave up the demand for the perpetual council clause. The IP never did consent, but no disciplinary action was ever taken (Jt. App. 124; 232-235; 565-571; 656-657).

The IP, as both courts found, told the local that he wished them well in their negotiations, but that any unresolved issues would have to be finally decided by the Council (App. 23, Jt. App. 26). At approximately the same time, without informing the local, Freeman gave Geary his assurance that he would do what he could to obtain other union employees for the Maryland contractors (App. 24-5). The local refused to abandon the strike, and Geary advised the Md. Chapter not to bargain with the local while the local was on strike (Jt. App. 318-320); the Md. Chapter formally broke off the bargaining on July 6, 1961 (App. 24).

The Revocation Proceedings

On July 7, 1961, the IP formally charged the local with engaging in a strike without his consent, in violation of the IBEW constitution. He did not prefer charges before the IEC as permitted by Article IX, §4, of the union constitution, and he admitted that why he did not do so was "a rather difficult question to answer" (Jt. App. 35). He appointed a referee to take testimony, but reserved to himself all questions of law as well as the ultimate decision.

Before the hearing, the local's representatives again met with him on July 12, and, as he admitted, offered to settle the matter by ending the strike and submitting to independent arbitration all unresolved issues as to the terms of the new contract. The IP refused, insisting that the only way that the local could avoid disciplinary action was to submit all outstanding issues to the CIR. The local's representatives reiterated their fear of the perpetual council

clause, and the IP refused to give them any assurance that the clause would not be imposed by the Council, because "I couldn't speak for the Council" (Jt. App. 247) — although he had a veto and could have prevented the imposition of such a clause. The IP did not tell the local representatives, and it was not discovered until well after suit was brought, that the CIR by secret resolution, not revealed to all the officers and International Representatives of the IBEW, much less any of the locals, had (because of revision of local agreements in the late 1930's and early 1940's as Freeman testified — evidently in compliance with §8(d) of the NLRA — so as to provide expressly for the right to terminate (Jt. App. 239-41)), passed a formal resolution shortly after Freeman's accession to office establishing a policy that the CIR would impose the "yellow sheet" council clause whenever a case was submitted to it in which termination or the form of a council clause was an issue. The published policy of the CIR as stated in its own handbook (Jt. App. 640-41), and in the grant of jurisdiction by the sponsoring organizations (Jt. App. 869-77), emphasizes that the CIR is a *voluntary* judicial-type tribunal which has no power to act except to the extent granted by voluntary *ad hoc* submission or by general contract between an IBEW local and a NECA Chapter.

Testimony was taken before the referee. The Local called upon the IP to be a witness, among other things, concerning his real reasons for charging the Local, and "the propriety of his own actions and his own good faith and motives" (Jt. App. 35). The IP refused to testify because "in the final analysis, I would have to make a decision in the case" (Jt. App. 35). As the District Court found, "the general counsel for the IBEW drew the charges, presented evidence in support of the charges, cross-examined the Local's witnesses, argued the case and also consulted with and advised the IP with regard to the subject matter of the proceedings

and the provisions of his order, out of the presence of counsel for the Local" (Jt. App. 36).

On August 1, 1961, the IP issued an order revoking the local's charter, unless the local returned to work and directed its collective bargaining team to refer to the CIR, for final and binding decision, all collective bargaining issues currently in dispute with the Maryland Chapter, "it being understood that the Local should not be required to accept the council clause ruled terminable by Chief Judge Thomsen" (Jt. App. 28). The District Court found that "the quoted language was carefully chosen to avoid any commitment by the IP that the Local would not be required to accept a more stringent form of council clause" (Jt. App. 28). The IP testified that the submission of the bargaining to the CIR in lieu of striking was what he "really wanted from the Local Union" and the ultimate objective for which he was "prepared to enforce disciplinary action" (Jt. App. 249).

The Local, as the District Court found, justifiably fearing the CIR, refused to submit to that body and the revocation became effective August 7, 1961. The tremendous severity of the penalty in terms of the pension, sickness, hospitalization, disability and other benefits, as well as the employment, of the approximately 1400 members of the Local, is documented in the opinion of the District Court (Jt. App. 41). The Local appealed to the International Executive Council (IEC), a majority of whose members were appointees of the IP. The attempt of the Local to disqualify such appointees was disallowed and the IEC affirmed the IP. The District Court found, and the Court of Appeals did not disturb the finding, that the hearing before the IEC was an "appellate" proceeding and not in the nature of a trial de novo, and therefore could not cure any unfairness in the hearing before the IP.

Local 24

In July, 1961, before the completion of the revocation proceedings, the IP authorized laying the groundwork for a new Local, No. 24 (Jt. App. 30), whose purpose, as the IP testified, was to take over the rank and file of Local 28 (Jt. App. 273). Local 24 was officially chartered shortly after Local 28's charter was revoked. The District Court found "this new Local . . . is and from its inception has been dominated by Representatives of the International" (Jt. App. 30), and was formed as "part of a plan" to substitute "a subservient local" for Local 28 (Jt. App. 45).

Two leading contractors of the Md. Chapter cooperated with the IBEW in organizing Local 24, and their Vice Presidents had resigned their offices (although neither they nor the other top permanent supervisory and management personnel who were charter members of 24 ever changed their duties) in order to participate in the organization of the new union. The charter group numbered approximately 30 of these "carefully chosen leaders" (Jt. App. 30). This group adopted new by-laws written by specially assigned International Representatives (Jt. App. 288), which, as distinguished from Local 28, provided no welfare funds at all and complete control by the president over the designation of the collective bargaining team.

While the majority opinion of the Court of Appeals points out that "when permanent officers were elected . . . several hundred men had joined Local 24" (App. 29), International's answer to Local 28's complaint admits (Jt. App. 117), and the District Court found (Jt. App. 30), that nominations for permanent officers were made and closed when the membership was still limited to the charter group of approximately 30. The faction of Local 28 favored by the International and forced out of office by the members, are the present leaders of Local 24.

It took exactly two brief meetings, on September 19 and 21, 1961 (Jt. App. 663-64) to negotiate a new contract between Local 24 and the Maryland Chapter, as compared to the innumerable protracted negotiations extending over six months between Local 28 and the Md. Chapter, during which no agreement could be reached. The negotiations on behalf of 24 were conducted by Alfred Terry, the International Representative assigned to supervise the Local (Jt. App. 388), and on behalf of the Md. Chapter by S. J. Cristiano, Eastern Regional Director of NECA (Jt. App. 140) working under Geary.

The contract provided for a "25¢ wage increase for each of two years" (App. 29). The IP did not insist on a perpetual council clause in this contract. Upon the signing of the contract, the international representatives conducted an organizing campaign, which included taking contractors away from Local 28 (Jt. App. 299-301), having Local 28's members fired from their employment and boasting of these exploits in anonymous weekly letters (Jt. App. 668-69) sent to every member of Local 28 by addressograph plates furnished for the purpose by the International.

REASONS FOR GRANTING THE WRIT

This case raises questions of construction of federal labor statutes which are of the highest importance and urgently require settlement by this Court. As in the past generation, the protection of labor unions and employers in their relationship to each other were the chief problems of labor law, so currently the chief problem in this field is the protection of the individual union member in his relationship to his union. Concern over this problem has culminated in the Landrum-Griffin Act of 1959. The instant case is the first opportunity of this Court to clarify the following fundamental questions as to both substantive rights and the scope of federal jurisdiction under this act and related labor statutes, which immediately and vitally affect not only the

1400 members of Local 28, IBEW, and the 150,000 IBEW members in the electrical construction industry, but also the millions of rank and file members of all American labor unions.

1. *The nature of the fiduciary obligation of International union officers to local unions and their members.*

This case raises fundamental questions as to the scope and content of the fiduciary obligation of union officers enacted into Federal law by section 501(a) of the Landrum-Griffin Act.

Section 2 of Landrum-Griffin (29 U.S.C. §401) declares Congress's finding that although "it is essential that labor organizations . ... and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations . . . there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees . . ."

Section 501 of Landrum-Griffin (29 U.S.C. §501) is the chief operative provision reflecting this basic Congressional concern. This section provides that "the officers . . . of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization . . . to refrain from dealing with such organization as an adverse party or on behalf of an adverse party in any matter connected with his duties . . ." Any union constitutional provision purporting to exculpate union officials from liability for violation of §501 is declared void as against public policy.

Professor (now Solicitor General) Cox has described this section as "potentially the most important" in the entire Act. Cox, Law and the National Labor Policy (1960) 92. The District Court concluded, and the majority of the Court of Appeals did not deny that the "broad declaration" of the fiduciary duty in section 501(a) is not limited to "pecuniary matters" (Jt. App. 13). The legislative history, exhaustively analyzed in *Nelson v. Johnson*, 52 LRRM 2047 (D.C. Minn. 1962) makes clear that the District Court's conclusion was correct and that the duty extends particularly to the collective bargaining context. Section 501 was the congressional response to the findings of the McClellan committee with regard to sweetheart contracts, discrimination against political opposition, "sellout" of locals by international officials, and other abuses of official power, both large and small. The section "is no parsimonious dole by the Congress", but was intended to remedy all the mischief which called it forth, whether or not within the literal language of union constitutional provisions. *Nelson v. Johnson*, supra, 52 LRRM at 2094.

The majority concluded, despite the express finding of the District Court to the contrary (Jt. App. 39, 40-1), that the IP's conduct in this case was not a breach of his abiding statutory fiduciary obligation. In this, the majority decision is permeated with a spirit so insensitive to the purpose and declared policies of the Landrum-Griffin Act, that there is a grave danger to the rights of millions of rank and file union members. If that decision is allowed to stand, suits to vindicate the rank and file will be so discouraged that this Court may not soon get another opportunity for correction.

The decision below also sharply conflicts in principle with two District Court cases in other circuits, which approve and follow the District Court opinion in the instant case. *Nelson v. Johnson*, 52 LRRM 2047 (D.C. Minn. 1962)

(extensively discussing the District Court opinion in the instant case at pp. 2077-83); *Calabrese v. United Association*, 52 LRRM 2022 (D. N.J. 1962). Unless this Court makes clear as promptly as possible that the Landrum-Griffin Act is to be sympathetically construed and liberally applied by the courts, the judicial remedies that Congress meant to open against union officials serving their flock with less than undivided loyalty will be only a promise broken to the hope.

"The principles stated in §501(a) were drawn from the *Restatement of Agency* in an effort to incorporate the whole body of common law precedents defining the fiduciary obligations of agents and trustees with such adaptations as might be required to take into account the special problems and functions of a labor organization". Cox, *Internal Affairs of Labor Unions Under The Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 828 (1960). The common law fiduciary obligation requires more than even good faith. *Nelson v. Johnson*, 52 LRRM 2047 (D.C. Minn. 1962) (Directive of International General Executive Board overriding decision of Local, even if in good faith and within constitutional powers of the General Executive Board, violated fiduciary obligation under the circumstances of that case).

One of the most fundamental duties of a fiduciary is the "duty to communicate to the beneficiary material facts affecting the interest of the beneficiary which he knows the beneficiary does not know and which the beneficiary needs to know for his protection in dealing with a third person in respect to his interest". Restatement of Trusts, 2d Ed. §§173, Comment *d*, 201; Restatement of Agency, 2d Ed. §387, Comment *b*; 36A C.J.S., Fiduciary, §§381-89. In this case, Freeman did not tell the local that he had blunted in advance the force of their bargaining position by his deal with NECA in the Council to limit to 10¢ per hour the

increase for the next year and by his assurance to Geary before the strike that he would do all he could to make the local submit all unresolved collective bargaining issues to the Council, where the wages were already "cut and dried" and where the local would be subjected to the perpetual council clause.

The majority opinion does not discuss this obligation except for a passing reference in the statement of facts, pointing out that the District Court found as a fact that the Local failed to prove that news of the deal was communicated to the Md. Chapter (App. 21). However, the District Court also found that International failed to prove the contrary (Jt. App. 23) and this state of the record properly did not prevent the District Court from finding, as it did, that the revocation was a breach of the IP's common law and statutory fiduciary obligations. First, it is immaterial whether the Md. Chapter was ever told in so many words that the decision reached on May 15 would limit the increase to only ten cents; the breach was complete when the IP made his commitments to NECA, particularly to NECA's chief executive, Geary, who thereafter, as found by both courts, closely advised the Md. Chapter in its dealings with Local 28 with knowledge of what had been revealed to him, but not to the local. Second, the course of conduct of the Md. Chapter, as found by the District Court, and the majority of the Court of Appeals, is consistent with knowledge of the decision to the point of remarkable "coincidence" (Jt. App. 23) if the decision was not expressly communicated; and the burden is not on the local to prove express communication, but on the fiduciary to prove that no harm came from the breach. See Restatement of Trusts, 2d Ed. §172, comment *b*; cf. 1 Story, Equity Jurisprudence, 13th Ed. (1886), 333 n; Restatement of Agency, 2d Ed. §389, Comments *b*, *c*, and *e*.

Finally, the breach of fiduciary obligation is broader than even the tipping of the IP's hand in regard to wages.

The following additional facts established that Freeman did not have the required loyalty to his beneficiaries: his extreme anger at the present leadership of the local because they had exercised their right to bring suits against the International under §101(a)(4) of Landrum-Griffin; the unreasonably low wage increase beyond which Freeman would not support the local, which is explicable only by a desire to punish the local's members; Freeman's failure to communicate to the local, during its negotiations with the Md. Chapter, his other commitments to Geary that he would not consent to any strike and would assist in breaking any strike undertaken without his consent; his misleading the Local by dealing with it, in the words of §501(a), "as an adverse party or on behalf of an adverse party", in that he led the Local to believe that its only adversary was the Md. Chapter of NECA, or, as Judge Soper put it, "he promised the Local his support, but in fact worked in harmony with NECA" (App. 79); his admitted refusal to accept the Local's offer on July 12, 1961 to return to work and submit to independent arbitration, which the majority of the Court of Appeals apparently overlooked when they stated that the revocation "would seem to have been the only effective means to restore industrial peace" (App. 36, n. 23); his insistence that only by submission to the CIR, where he could be sure to give effect to his "sellout" could the Local avoid disciplinary action; the difference between his treatment of this strike and numerous other unauthorized strikes, particularly the contemporaneous strike over the same issue in Madison, Wis., where he did give the Local time, and did not, behind the Local's back, make a deal with the employers which made free collective bargaining impossible; his conduct in respect to the hearing, where he was both prosecutor and judge and refused to testify when the propriety of his own conduct was called into question and his testi-

mony was vital to the Local's defense; the severity of the sanction imposed, affecting the employment, pension and other membership rights of 1400 IBEW members in the Baltimore area; and his being, as the District Court put it, "in league with the wolves" rather than a "good shepherd", in the establishment of Local 24 (Jt. App. 593).

As to these considerations, the majority opinion is simply silent. The opinion rests almost entirely on the abstract proposition that an IP may legitimately feel that the best interests of his union as a whole require that he not support the immediate objective of one of his locals. As an abstract proposition, this may be entirely correct, but this case goes far beyond a legitimate and open disagreement as to policy. As Judge Soper points out in his dissent the "majority opinion embraces the theory that 'basic union policy and structure' require that the dominant power be lodged in the parent body and pursues this theme so steadily in the course of an elaborate discussion that in the end little heed is given to the arbitrary manner in which the IP exercised his power" (App. 78).

Actually, the greater the concentration of power, so relied upon by the majority opinion, the greater the necessity for the most careful scrutiny of the exercise of such power to insure compliance with fiduciary standards. The question is not one of the extent of power, but of its forfeiture by abuse under particular circumstances. In approaching this question, the majority of the Court of Appeals fails to give weight to the "emphatic" mood of Congress in the enactment of the fiduciary obligation. See *Nelson v. Johnson*, 52 LRRM 2047, 2089 (D.C. Minn. 1962).

The rights of rank and file members intended to be secured by Congress are so vitally important that it is proper to take alarm at the first indication that they are infringed, and no erosive construction or application of the statutory duty should be tolerated by this Court. It was the IP's own breach of fiduciary obligation that gave rise to any

condition in which he might have felt it "necessary" to discipline the Local, and his real objective at all times was to force the Local to the CIR, which was the instrument by which his breach of fiduciary obligation was to be consummated. For the Local to have yielded would have been to place the breach beyond all remedy.

2. *The legality of the IP's attempt to destroy permanently all local autonomy in collective bargaining by forcing a perpetual "council clause" upon the local.*

The majority of the Court of Appeals held the IP legally justified in using his constitutional power to discipline a local for the purpose of forcing it to submit to a perpetual contract whereby wages, hours and other conditions of employment would be, practically speaking, forever fixed, without the possibility of a strike except in breach of express contract terms, unless the Md. Chapter of NECA, or the CIR by unanimous vote, agreed to a change. Such a contract, by taking away the local's right to insist upon a change in the dispute-settling machinery, in effect takes away the local's right to bargain. The majority opinion describes this issue as one of "basic union policy and structure". Actually, the decision opens the door to the restoration of the tyranny and autocratic rule, which it was the express purpose of Landrum-Griffin to destroy. See *Nelson v. Johnson*, 52 LRRM 2047, 2059-63 (D.C. Minn. 1962); Summers, The Impact of Landrum-Griffin Upon State Courts, 13 N.Y.U. Ann. Conf. on Labor, 333, 335; Note, Rights of Union Members: The Developing Law Under the LMRDA, 48 Va. L. Rev. 78, 81 (1962).

Section 2 of Landrum-Griffin affirms that it is the responsibility of the federal government to "protect *employees'* rights to . . . . choose their own representatives" and "bargain collectively". The right to designate bargaining representatives is a right of the employees in the

bargaining unit. The IP cannot use his disciplinary powers to compel those employees to submit to "higher collective bargaining" by representatives they have not chosen, or impose sanctions upon such employees because of their exercise of the rights guaranteed by law. Cf. *Allen Bradley Co. v. N.L.R.B.*, 286 F. 2d 442 (C.A. 7, 1961).

If local members are forever tied to the will of the IP as to the substantive terms of their bargaining contract, what is the point of the democratic formulation of local policy? Why should an IP be worried about imposing formal trusteeships or about other restraints in the Landrum-Griffin Act if he can accomplish suspension of local autonomy by making the local membership forever dependent upon his good grace with regard to their wages and hours? In this broader aspect the decision below endangers the livelihood of every union member and provides a tremendous weapon in the hands of the Becks, the Crosses and the Hoffas, imperiling the whole concept of union democracy at the root of Landrum-Griffin's design to guard "local autonomy". Summers, The Impact of Landrum-Griffin on State Courts, 13 N.Y.U. Ann. Conf. on Labor, 333, 334 (1960).

The majority refused to find any fault with the IP's purpose, apparently holding itself powerless to consider this question of labor "policy" in the absence, as it conceived, of express statutory provisions. It is clear, however, that the District Court was correct in concluding that the national labor policy forbids the use of disciplinary powers (including forfeiture of pension and other welfare benefits) to compel the acceptance of a perpetual council clause. cf. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 457 (1956); *Nelson v. Johnson*, 52 LRRM 2068-69); Summers, The Impact of Landrum-Griffin on State Courts, 13 N.Y.U. Ann. Conf. on Labor, 333, 336 (1960); *Young v. Hayes*, 195 F. Supp. 911 (D.D.C. 1961). Perpetual or evergreen labor

agreements are contrary to the policy of the NLRA and Landrum-Griffin against unduly rigid restraints on the right of employees to select their bargaining representatives. See Chief Judge Thomsen's decision in *Local 28 v. Md. Chapter, NECA*, 194 F. Supp. 494, (D. Md. 1961) and the cases cited in majority opinion at App. 43-45. The same policy forbids an attempt by the IP to discipline a local in order to force essentially the same result, i.e., a perpetual usurpation of the Local's role in collective bargaining.

The majority opinion argues that "at most, the International can be said to have attempted to *compel* one of its component bodies" to "*voluntarily* forbear" any claim in the future to the right to strike or to attempt to change wages, etc. without consent of the Md. Chapter or every member of the CIR (App. 45, emphasis supplied). If this remarkable concept of compelled voluntarism can save the IP's purpose from illegality, then collective bargaining has brought workers not freedom but an additional tyrant. See remarks of Senator McClellan, 105 Congressional Record 5086 (1959); Summers, Union Powers and Workers Rights, 49 Mich. L. Rev. 805, 820 (1951). Cf. *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229 at 250, 62 L. Ed. 260 at 276 (1917).

At the very least, in its narrowest aspect, this case provides an important opportunity for this Court to make clear that union constitutions will not be interpreted to give to the IP the power sanctioned by the majority below, where, as here, the language claimed to relinquish the fundamental rights of local members is not express and clear. Cf. *Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 729, 744-45, 89 L. Ed. 1886, 1897, 1906 (1945). In the instant case, the IP recognized on the witness stand that the IBEW constitution recognizes the right of locals to bargain their own wages and hours (Jt. App. 65, Art. XV §5; Jt. App.

164, 167-71, 749), a right Professor Dunlop, International's own expert, testified necessarily involves the right to bargain duration of the contract (Jt. App. 523).

Contracts negotiated by a local are subject to approval by the IP, and the IP is authorized to enter into certain national agreements covering the entire jurisdiction of the IBEW, but these powers should be harmonized with the locals' powers to negotiate wages, etc. (Jt. App. 164, 174). Freeman admitted on the witness stand that the IBEW constitution provides for a degree of local autonomy he has no right to destroy (Jt. App. 171-2). The constitution does not contemplate complete authoritarian power in the IP but a balance between local autonomy and international power. The decision below permits the IP to destroy the balance and permanently wipe out all local autonomy with respect to collective bargaining.

3. *The Meaning of a "Full and Fair Hearing" Within §101(a)(5) of Landrum-Griffin.*

The Landrum-Griffin Act (§101(a)(5), 29 U.S.C. §411 (a)(5)) established for the first time a federal requirement of a full and fair hearing as a condition of the discipline of union members. Section 101(b), 29 U.S.C. §411(b), provides that "any provision of the constitution and by laws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect".

The abuse of disciplinary powers was one of the major concerns of Congress in enacting the statute. It is of fundamental importance that it be made perfectly clear to union officers, who seem to be imbued with the spirit of union constitutions providing for autocratic disciplinary procedures and automatic expulsion for failure to exhaust internal remedies, that the requirements of a full and fair hearing will be scrupulously insisted upon by the federal courts. The instant case provides an important opportunity for this Court to lay down the requirements of a

full and fair hearing in union disciplinary cases as a matter of federal law, and the approach to be taken to the interpretation of international constitutions, in light of §101(b) above quoted, with regard to the jurisdiction of a union officer to act as judge where he is also the charging party and prosecutor.

The majority of the Court of Appeals, reversing the District Court's express finding, concluded that the local had had a full and fair hearing, notwithstanding that the IP was both prosecutor and judge; that he refused to appear as a witness although his testimony was vital to the defense; and that the general counsel of the International helped him draft the charges, prosecuted the case and advised him out of the presence of counsel for the local, with regard to the subject matter of the proceedings and the provisions of his order. The IP's role as prosecutor and judge was approved in the prevailing opinion below on the ground that as prosecutor, he was acting "officially" and not personally (App. 51). However, as the District Court concluded, and as Judge Soper pointed out, he was so personally involved that he simply could not be a fair judge either as to guilt or penalty, because at the very least "he knew that he had opposed the working employees and favored NECA" and "his own conduct was one of the matters that should be taken into consideration in deciding the case" (App. 80-81).

The majority opinion recognizes that the right to a fair hearing includes the right to confront and cross-examine witnesses, but is entirely silent as to the failure of the IP to submit himself as a witness to the local, whose defense was based on calling into question the propriety of his conduct. There simply could not be a "full" hearing, let alone a fair one, without the IP's testimony.

Many union constitutions provide for trial either by the IP or the International Executive body. This Court should

make clear that the grant of jurisdiction by the union constitution must be construed as conditioned upon the lack of such personal involvement by the tribunal as would prevent a full and fair hearing. Any provision similar to the provision in the IBEW constitution, giving the IP jurisdiction to try a Local, should be held to be qualified by §§101(b) and 501 of Landrum-Griffin so as to deny jurisdiction where the IP is personally involved to the extent shown in this record. Even at common law, the courts have consistently so qualified union constitutional provisions, and, where qualification is impossible as a matter of construction, have declared them void as against public policy. (Summers, The Law of Union Discipline: What the Courts Do In Fact, 70 Yale L.J. 175, 180-84 (1960); The Impact of Landrum-Griffin on State Courts, 13 N.Y.U. Ann. Conf. on Labor, 333, 349-50 (1960)).

4. *The Scope of the Trusteeship Provisions of Landrum-Griffin.*

A major part of the legislative history of Landrum-Griffin was concerned with the destruction of local autonomy by international officers, particularly by means of "trusteeships". This concern resulted in an express grant of federal jurisdiction over "trusteeships" at the suit of any member or subordinate body of a labor organization. Congress defined "trusteeship" more broadly than the traditional trusteeship over local unions. Section 3(h) (29 U.S.C. §402(h)) defines "trusteeship" as "any receivership, trusteeship or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws". This case raises the vital question of whether the statutory "trusteeship" provision may be rendered nugatory by permitting an International union, without accountability in a federal court, to revoke a local charter and to recharter a new and subservient local for the same jurisdiction, in which the prior democratically elected

leadership is ousted in favor of leadership handpicked, and as the District Court found, completely dominated by International.

It is unnecessary to belabor the vast importance of this question. As one commentator put it, "If the illegitimate purposes of trusteeship can be accomplished by other means, how effective are the trusteeships provisions of LMRDA?" Horowitz, Possible Effects of LMRDA's Trusteeship Provisions, in Slovenko Ed., Symposium on LMRDA of 1959 (1961), 458, 463. The District Court found that there was no trusteeship in the instant case because it found no specific attempt to evade the trusteeship provisions of the statute. The Court of Appeals rejected the argument that the facts with regard to the new local set forth at p. 20 of this Petition, constituted a trusteeship within the statutory definition, although it found the question "exceedingly close" (App. 73). On the other hand in Anderson, Landrum-Griffin and the Trusteeship Imbroglio, 71 Yale L.J. 1460, 1478-1485 (1962), in a careful and reasoned discussion of the instant case, the conclusion is reached that the action of the International in this case was such a method of supervision and control suspending the autonomy otherwise available to the Baltimore Local of the IBEW that federal jurisdiction probably exists under the trusteeship section of Landrum-Griffin. It is submitted that the latter conclusion is correct and that the sweep of the Landrum-Griffin trusteeship provisions, going as they do to the root of the problem of union democracy which was central to the act, should be promptly settled by this Court.

5. *The Policy of the Courts as to Counsel Fees in Landrum-Griffin Actions.*

The District Court, although it set aside the disciplinary action challenged in this case, denied damages to the local (which were stipulated to amount to $50,662.64) (Jt. App.

714), and also denied counsel fees. The Court of Appeals of course did not reach these questions. If, as is submitted, the revocation is invalid, this case will also raise questions in this Court as to whether or not counsel fees should be awarded to petitioners under Landrum-Griffin.

This is an important opportunity to make clear that trial courts should be liberal to successful plaintiffs in Landrum-Griffin actions in order to fulfill the congressional objective of encouraging suits to remedy wrongful conduct by union officials. The policy of courts on counsel fees can vitally affect the extent to which the paper guarantees of Landrum-Griffin will be translated into meaningful protection in the courts. This Court should make clear beyond doubt that counsel fees should be awarded as a matter of course where plaintiffs have successfully challenged illegal conduct of union officials in suits under Landrum-Griffin. See *Nelson v. Johnson*, 52 LRRM 2047, 2095-97 (DC Minn. 1962).

As Professor Cox has pointed out, "the effectiveness of the LMRDA will depend largely on the initiative and energy of union members". Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 852 (1960). There are vast obstacles, including time, money and fear of reprisals, involved in such an undertaking. Cox, Law and the National Labor Policy (1960) 105-6. The courts should do everything in their power to encourage the bringing of well founded suits under the statute.

6. *Other Important Jurisdictional Questions Besides Trusteeship.*

Most of the problems in this case as to federal jurisdiction and the power of the federal courts under the national labor statutes were decided in favor of the petitioners. However, the Court of Appeals found them "serious" (App.

3) and there is conflict among the lower federal courts as to some of them. Upon grant of certiorari they will, no doubt, be presented for decision. The questions numbered 5 and 8-11, on pages 4-5, *supra*, which relate to the extent of federal judicial power over union discipline should be promptly clarified. This case also provides a particularly important opportunity to clarify and rationalize the relationship of NLRB jurisdiction to that of the courts in cases for breach of a union constitution, where part of the total conduct of the international officers in breach of the constitution may arguably also be an unfair labor practice, but the NLRB does not have jurisdiction over all of the questions in the case, which are inextricably intertwined, nor the power to give complete relief, and the courts likewise cannot do complete justice if the case is fragmented between two tribunals. See Sovern, Section 301 and the Primary Jurisdiction of the NLRB, 76 Harv. L. Rev. 529 (1963).

CONCLUSION

Rarely does a case raise issues of such signal importance in a vital area of public law as does the case at bar. See *Business Week*, Feb. 16, 1963, p. 55. The petition for certiorari should be granted.

Respectfully submitted,

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